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IP Authority, LLC Ramraj Soundararajan 9435 Lorton Market St. #801 Lorton, VA 22079			EXAMINER SU, BENJAMIN	
			ART UNIT	PAPER NUMBER
			2616	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/604,997

Applicant(s)

TODD ET AL.

Examiner

Benjamin Su

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it is more than 150 words and longer than one page. Correction is required. See MPEP § 608.01(b).

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in claims 20, 34, the claimed subject matter "statistics are calculated with a local clock source which is derived by a hardware or software phase locked loop or a hardware or software delay-locked loop to avoid monotonically increasing values due to differences in expected bit rate values caused by offset or drift

in frequency in said local clock source " is not supported by the specification.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "105" and "200" have both been used to designate Computing Element. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 31, 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 31, it is unclear the exact revision of each network architecture. Same problem exists in claim 44.

Claim Objections

8. Claims 2 – 6, 8 – 21, 23 – 26, 28 – 39, 41 – 47 are objected to because of the following informalities: In claim 2, line 1, the second occurrence of “A method” seems to refer back to “A method” previously recited, if this is true, it is suggested to change the second “A method” to ---The method---. Same problem exists with the term “A method” in claims 8 – 21, line 1; the term “An article of manufacture” in claims 23 – 26, line 1; the term “A system” in claims 28 – 39, 41 – 47, line 1.

For claim 18, the term “the flow”s” should be changed to ---the flow’s---.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 22 – 26 are rejected under 35 U.S.C. 101 because claims 22 – 26 claimed an article of manufacture comprising computer usable medium having computer readable program code, it is unclear if the computer usable medium can be read by a computer or the computer readable program code can be executed by a computer, thus, no tangible result is produced, therefore, it is non-statutory. It is suggested to change the claims to “an article of manufacture comprising computer readable medium encoded with computer executable instructions”.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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11. Claims 1 – 8, 15 – 19, 22 – 24, 26 – 28, 32, 38, 39, 40, 47 rejected under 35 U.S.C. 102(e) as being anticipated by Sitaraman et al. (US 2004/0136327).

Sitaraman et al., regarding claim 1, disclosed a method for analyzing packetized network traffic comprising the steps of: a. receiving a copy of the network traffic comprising one or more streams (see paragraph 25, lines 1 - 2); b. filtering the received network traffic to isolate at least one stream from the one or more streams (see paragraph 29, lines 10 – 18, 25 - 27); and c. forwarding packetized data corresponding to the at least one isolated stream to a native streaming interface (see paragraph 31, lines 24 – 26, wherein the performance monitoring module corresponds to a native streaming interface), the native streaming interface providing minimum time distortion as compared to the network traffic (see paragraph 33, lines 2 – 5, wherein the calculation of actual playback bandwidth implies there is minimal amount of distortion is added, otherwise, the calculation of actual playback bandwidth can not be completed due to packets becoming useless caused by excessive distortion) to permit media stream analysis and monitoring (see paragraph 33 , lines 1 – 3, paragraph 36, lines 3 – 5) to indicate the network's influence on the at least one isolated stream and measure the at least one isolated stream's conformance to a pre-determined stream standard (see paragraph 35, lines 5 – 18, in order to determine if a packet arrives late or any interruption, etc, it is inherent there is a pre-determined stream standard to compare with);

regarding claim 2, wherein the method further comprises the steps of: a. computing statistics associated with each isolated stream (see paragraph 33, lines 1 –

3) the statistics comprising at least a delay factor (DF) parameter defining an instantaneous flow rate balance representing a virtual buffer delay that is needed to prevent data loss and absorb network jitter growth (see paragraph 42, lines 9 – 11, wherein the rebuffer-time-per-minute corresponds to a delay factor); and b. forwarding, for each isolated stream, the computed statistics to a data consumer (see paragraph 81, lines 11 – 12, wherein the central management location corresponds to a data consumer);

regarding claim 3, wherein the computed statistics additionally comprises a media loss rate (MLR) parameter representing number of media packets lost or corrupted (see paragraph 58, lines 1 – 3).

Sitaraman et al., regarding claim 4, disclosed a system for analyzing packetized network traffic comprising: a. one or more interfaces to forward a copy of the network traffic comprising one or more streams (see paragraph 25, lines 1 – 2, 17 - 18); b. one or more filters to receive and filter the forwarded network traffic to isolate at least one stream from the one or more streams (see paragraph 29, lines 10 – 18, 25 – 27); and c. a native streaming interface to receive packetized data corresponding to the at least one isolated stream (see paragraph 31, lines 24 – 26, wherein the performance monitoring module corresponds to a native streaming interface), the native streaming interface providing minimum time distortion to permit media stream analysis and monitoring see paragraph 33, lines 2 – 5, wherein the calculation of actual playback bandwidth implies there is minimal amount of distortion is added, otherwise, the

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calculation of actual playback bandwidth can not be completed due to packets becoming useless caused by excessive distortion) to indicate the network's influence on the at least one isolated stream and measure the at least one isolated stream's conformance to a pre-determined stream standard (see paragraph 35, lines 5 – 18, in order to determine if a packet arrives late or any interruption, etc, it is inherent there is a pre-determined stream standard to compare with);

regarding claim 5, the system further comprising: a. a compute engine to compute statistics associated with the at least one isolated stream (see paragraph 33, lines 1 – 3, wherein the PMM corresponds to a compute engine), the statistics for each stream comprising at least a delay factor (DF) defining an instantaneous flow rate balance representing a virtual buffer delay that is needed to prevent data loss and absorb network jitter growth (see paragraph 42, lines 9 – 11, wherein the rebuffer-time-per-minute corresponds to a delay factor); and b. one or more interfaces to forward the computed statistics for the one or more streams of interest to a data consumer (see paragraph 81, lines 11 – 12, wherein the central management location corresponds to a data consumer);

regarding claim 6, wherein the computed statistics additionally comprise a media loss rate (MLR) parameter, the MLR representing number of media packets lost or corrupted (see paragraph 58, lines 1 – 3);

claims 7, 8, 22, 23, 27, 28, 38, 40, 47 are rejected the same reason as above.

regarding claim 11, wherein the method further comprises the step of recovering control information associated with the one or more streams (see paragraph 40, lines 1 – 4, wherein the Startup Time corresponds to control information) and forwarding the recovered control information to the data consumer (see paragraph 81, lines 11 – 12);

regarding claim 15, wherein the computed statistics additionally comprise: average bit-rate (see paragraph 56, line 1, wherein Normal Packet Rate corresponds to average bit-rate);

regarding claim 16, wherein the method further comprises the step of displaying the computed statistics (see paragraph 81, lines 14);

claims 26, 43 are rejected the same reason as above;

regarding claim 18, wherein the instantaneous flow rate balance value is computed from the each isolated stream via a counter computing an instantaneous flow rate (see paragraph 42, lines 1 – 10, wherein the rebuffer-time-per-minute corresponds to instantaneous flow rate balance value, in order to measure the rebuffering time, it is inherent to have a counter to keep track of the balance between the instantaneous flow rate and the output flow rate) and the counter registers a deviation from nominal as an indication of the flow's instantaneous accumulated jitter for forwarding to the data consumer (see paragraph 41, lines 6, wherein rebuffers-per-minute corresponds to a deviation from nominal as an indication of the flow's instantaneous accumulated jitter as rebuffering correlates to buffer size);

claim 32 is rejected the same reason as above;

regarding claim 39, wherein the filter and compute engine filters operational statistics from streaming media processor equipment and computes a set of reduced data, for transmission to a management system (see paragraph 33, lines 1 – 3, wherein the PMM corresponds to filter and compute engine; paragraph 81, lines 11 – 12);

regarding claim 42, wherein the system further comprises a controller (see paragraph 30, line 1, wherein the agent shell corresponds to a controller) to transmit control instructions from the data consumer to modify system-level state-based logic data associated with the one finite state machine (see paragraph 30, lines 2 – 4, wherein the agent nucleus corresponds to one finite state machine).

Claim Rejections - 35 USC § 103

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 9, 10, 29, 30, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitaraman et al.

Sitaraman et al. disclosed, regarding claim 9, 10, all the subject matter of the claimed invention as recited in paragraph 11 of this office action and encoding the computed statistics after forwarding (see paragraph 81, lines 12 – 14); the encoding is encrypting (see paragraph 81, lines 13 – 14, it is inherent that data must be encrypted before transmitting a secure portal).

Sitaraman et al. fail to teach encoding the computed statistics prior to forwarding. However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to encode the statistics prior to forwarding in order to have more balanced processing load by processing the encoding at the performance monitoring module.

Claims 29, 30, 41 are rejected the same reason as above.

16. Claims 12, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitaraman et al. in view of Veres et al. (US 6807156).

Sitaraman et al. disclosed, regarding claim 12, all the subject matter of the claimed invention as recited in paragraph 11 of this office action.

Sitaraman et al. fail to teach forwarding a warning to the data consumer if, for each of the isolated streams, the computed statistics exceeds a predetermined threshold or rate of change.

Veres et al. from the same or similar field of endeavors teach forwarding a warning to the data consumer if, for each of the isolated streams, the computed statistics exceeds a predetermined threshold or rate of change (see column 13, lines 3 – 7).

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use teach forwarding a warning to the data consumer if, for each of the isolated streams, the computed statistics exceeds a predetermined threshold or rate of change in the method taught by Sitaraman et al. in order to allow efficient reporting by avoiding adding extra load to the network traffic unless necessary (see column 2, lines 54 – 57).

Claim 25 is rejected the same reason as above.

17. Claims 13, 14, 17, 21, 31, 35, 36, 37, 44, 45, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitaraman et al. in view of Ni (US 6928055).

Sitaraman et al. disclosed, regarding claims 13, 14, 17, 21, 35, 36, 37, all the subject matter of the claimed invention as recited in paragraph 11 of this office action.

Sitaraman et al. fail to teach bandwidth for the received network traffic is allotted in an on –demand manner regarding claim 13;

bandwidth for forwarding the computed statistics to the data consumer is allotted in an on-demand manner by increasing the bandwidth usage when computed statistics indicate a warning regarding claim 14;

the number of the computed statistics or a rate at which the statistics are computed is reduced during benign network conditions and increased for detailed analysis of each of the isolated streams as regarding claim 17;

implementing a quality of service (QOS) metering scheme based upon adjusting traffic priority between the forwarded computed network statistics and the streaming network traffic regarding claim 21;

one or more interfaces forward the computed statistics to a data consumer in an in-band manner by sharing network transmission bandwidth between the streaming network traffic and computed statistics regarding claim 35;

a quality-of-service (QOS) metering scheme is implemented based the computed traffic based upon adjusting traffic priority between statistics and the streaming network traffic regarding claim 36;

frequency of the computed statistics to be forwarded is scaled linearly with bandwidth associated with the one or more interfaces used to forward the computed statistics regarding claim 37;

Ni from the same or similar field of endeavors teaches bandwidth for the received network traffic is allotted in an on-demand manner (see column 3, lines 60 – 67, column 4, lines 19 - 20) regarding claim 13;

bandwidth for forwarding the computed statistics to the data consumer is allotted in an on-demand manner by increasing the bandwidth usage when computed statistics indicate a warning (see column 3, lines 60 – 67, column 4, lines 19 – 20, 33 - 36) regarding claim 14;

the number of the computed statistics or a rate at which the statistics are computed is reduced during benign network conditions and increased for detailed analysis of each of the isolated streams (see column 3, lines 60 – 67, column 4, lines 19 - 20) as regarding claim 17;

implementing a quality of service (QOS) metering scheme based upon adjusting traffic priority between the forwarded computed network statistics and the streaming network traffic (see column 3, lines 60 – 67, column 4, lines 19 - 20) regarding claim 21;

one or more interfaces forward the computed statistics to a data consumer in an in-band manner by sharing network transmission bandwidth between the streaming network traffic and computed statistics (see column 3, lines 60 – 67, column 4, lines 19 - 20) regarding claim 35;

a quality-of-service (QOS) metering scheme is implemented based the computed traffic based upon adjusting traffic priority between statistics and the streaming network traffic (see column 3, lines 60 – 67, column 4, lines 19 - 20) regard claim 36;

frequency of the computed statistics to be forwarded is scaled linearly with bandwidth associated with the one or more interfaces used to forward the computed statistics (see column 3, lines 60 – 67, column 4, lines 19 - 20) regarding claim 37; Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use bandwidth for the received network traffic is allotted in an on –demand manner regarding claim 13;

bandwidth for forwarding the computed statistics to the data consumer is allotted in an on-demand manner by increasing the bandwidth usage when computed statistics indicate a warning regarding claim 14;

the number of the computed statistics or a rate at which the statistics are computed is reduced during benign network conditions and increased for detailed analysis of each of the isolated streams as regarding claim 17;

implementing a quality of service (QOS) metering scheme based upon adjusting traffic priority between the forwarded computed network statistics and the streaming network traffic regarding claim 21;

one or more interfaces forward the computed statistics to a data consumer in an in-band manner by sharing network transmission bandwidth between the streaming network traffic and computed statistics regarding claim 35;

a quality-of-service (QOS) metering scheme is implemented based the computed traffic based upon adjusting traffic priority between statistics and the streaming network traffic regard claim 36;

frequency of the computed statistics to be forwarded is scaled linearly with bandwidth associated with the one or more interfaces used to forward the computed statistics as recited in claim 37 in the method taught by Sitaraman et al. in order to more efficiently utilize network bandwidth by taking into the network bandwidth usage information for sending a flow control message (see column 1, lines 35 – 40).

Claims 45, 46 are rejected the same reason as above.

Sitaraman et al. disclosed, regarding claims 31, all the subject matter of the claimed invention as recited in paragraph 11 of this office action.

Sitaraman et al. fail to teach the network is based on 802.3 architecture.

Ni from the same or similar field of endeavors teaches the network is based on 802.3 architecture (see column 3, lines 22 – 23).

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use the network is based on 802.3 architecture in the method taught by Sitaraman et al. in order to allow effective flow control by sending flow control frames to the congesting point (see column 1, lines 26 – 29).

18. Claims 19, 20, 33, 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Sitaraman et al.

Sitaraman et al. disclosed, regarding claim 19, all the subject matter of the claimed invention as recited in paragraph 11 of this office action.

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Sitaraman et al. fail to teach the instantaneous flow rate balance value is periodically cleared to avoid monotonically increasing values due to differences in calculated bit rate values caused by offset or drift in frequency in a local clock source.

However, it is well-known in the art at the time of the invention to the instantaneous flow rate balance value is periodically cleared to avoid monotonically increasing values due to differences in calculated bit rate values caused by offset or drift in frequency in a local clock source.

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use to the instantaneous flow rate balance value is periodically cleared to avoid monotonically increasing values due to differences in calculated bit rate values caused by offset or drift in frequency in a local clock source in the method taught by Sitaraman et al. in order to allow accurate data monitoring by avoiding counter value overflow.

Claim 33 is rejected the same reason as above.

Sitaraman et al. disclosed, regarding claim 20, all the subject matter of the claimed invention as recited in paragraph 11 of this office action and the statistics are calculated with a local clock source (see paragraph 67, lines 1 – 3).

Sitaraman et al. fail to teach the local clock source which is derived by a hardware or software phase locked loop or a hardware or software delay-locked loop to avoid monotonically increasing values due to differences in expected bit rate values caused by offset or drift in frequency in the local clock source.

However, it is well-known in the art at the time of the invention to use a hardware or software phase locked loop to avoid monotonically increasing values due to differences in expected bit rate values caused by offset or drift in frequency in the local clock source.

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use a hardware or software phase locked loop to avoid monotonically increasing values due to differences in expected bit rate values caused by offset or drift in frequency in the local clock source in the method taught by Sitaraman et al. in order to calculate accurate performance statistics.

Claim 34 is rejected the same reason as above.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rhodes (US 2003/0033403) and Reichman (US 6738813) are cited to show methods which are considered pertinent to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Su whose telephone number is 571-270-1423. The examiner can normally be reached on Monday - Friday 10 - 3 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BZS

Benjamin Su

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SUPERVISORY PATENT EXAMINER